CHAPTER-VI

CAUSES OF CHILD MARRIAGE

6.1 Introduction

The nature of causes to continue this heinous practice of child marriages are discussed in this chapter. These are of two types viz. 1) Socio Economic Causes 2) The Contradictory Nature of Marriages.

There is no single cause of child marriage. The reasons behind this continuing practice are manifold. Child marriages are deeply entrenched in the socio-economic context of backwardness, poverty, illiteracy, patriarchy and feudalism, falling sex-ratio, backward status of women in general, characterized by social malpractices like dowrn, female foeticide and infanticide and also certain traditional / cultural / religious practices in each region. Some of the apparent causes of child marriage are discussed as below:

6.2 Socio – Economic Causes:

6.2.1 Poverty of Parents:

Poverty is one of the major factors underpinning child marriage. Poverty-stricken parents are often persuade to marry their daughters in the hope of receiving money and sometimes with the prospect of saving money by getting several daughters married at the same time. The practice is also continued, especially among the economically weaker sections, by the
consideration of keeping marriage expenses to a minimum. Many child marriages form the backdrop for trafficking of girls into prostitution when the parents, knowingly or unknowingly, agree to marry off their daughter in return for the sums of money offered to them. Before the children are capable of making their own decision about the marriage, parents ensure that they are married within a close and select circle.

6.2.2 Dowry Amount paid by the Parents:

Dowry is paid by the bride's family to the groom's family in cash or kind, at the time when the bride is 'given away', the customary practice of dowry, which amounts to a huge amount of money, also forces the parents to marry their daughters as soon as possible. The equation for the parents is, that the lesser the age of daughter during the marriage, the lesser the amount of dowry to be given.

6.2.3 Patriarchy followed by the Traditionalists:

Child marriage stems from a complex set of power imbalances between women and men reflected in widespread social norms. The practices of 'patricracy' places women in a position on where they are unable to exercise a choice about their own sexual and reproductive health, in addition they have less freedom to move around, they are isolated from familiar social networks and are not permitted to make decision regarding their life. This limited freedom of exercise personal choice also contributes to the
practice of child marriage where other members of the family, for various reasons, take the decision regarding their marriage. It is interesting to note that the fathers and male elders make all the decision regarding the time of marriage and the choice of spouse, which reveals the lower status of women in society.

6.2.4 Sexuality and Virginity in Concern with Social Norms:

'Sexuality' of the girl is perceived a threat to social norms, values like family honour and placing a premium on virginity play a strong role in fostering this practice. The overvalued importance of virginity increases the insecurity with regard to the grown up girl. The parents feel that marrying a daughter at a young age, saves them from unwanted social humiliation. In this region where virginity is given a high social value, girls are married at a young age, often to men who are many years older. Marriage would also keep the girl 'safe' from unwanted sexual advances- this 'protection' rational is often voiced. It also rids the parents of their 'burden' of marrying their daughters at the earliest opportunity. The parents also subsume to the belief that boys and girls would indulge in loose moral practices i.e. sexual acts and therefore they should get married before this mishap takes place.

6.2.5 Caste Hierarchy in the Traditional Society:

Caste hierarchy perhaps, also has a role to play in perpetuating this system. Based on birth and heredity, caste does not allow marriages between
members of different castes. But youngsters whose emotions and passion can be ruled by other considerations, could violate this injunction. Thus, the hereditary caste system could have helped in nourishing the practice of child marriage out of a necessity to preserve itself.

6.2.6 Poor Implementation of Law:

Poor use and implementation of law is a very tangible reason for promoting this practice. Though, even in its present form, the Act suffers from certain lacunae, it is capable of impact if it is actually utilized. However, the near nil conviction rate indicates, that this law has classically been observed more in breach, than in practice. In fact, it seems to be misused by the police only to harass offenders and extract reasons from them.

6.2.7 Political Patronage:

Besides, the practice of child marriage is also sustained by the political patronage it receives. Important out personalities from politics, the bureaucracy and police grace many occasions of child marriage, thus fostering and endorsing it. These incidences of people in the echelons of power, participating in these marriages only prove the lack of political will bringing existing legal provisions into practice. Although, these political personalities are not directly involved in marriage, their presence translates into their approval. This kind of political protection for the evil practice of
child marriage makes the existing law redundant and institutionalizes it more. The Authorities frequently ignore mass marriages of children. They are performed in public and in most cases no attempt is made by the police or schools to stop the ceremonies from taking place.

Thus in sum - The child marriage practiced as a Tool for exploitation:

In these communities, it has been seen that child marriage is propagated to maintain the systematic exploitation of lower sections of society.

6.3 The Contradictory Nature of Marriage Laws:

6.3.1 Introduction:

In this context of marriage laws the researcher went through law literature and has found the contradictions; which have been causing to continue this evil practice. The different religion – based personal laws of marriage prevalent in India like Hindus, Muslims, Christians, Jews and Parsis in India have their own, separate marriage laws that prescribe the age of marriage for the bride and the bridegroom have been examined and the relevant provisions of these laws have been compared with CMRA. My argument is that the personal laws practically nullify the effect and authority of the uniformity applicable secular CMRA. In spite of the constitutional mandate of a uniform civil code, 1) (Article 44 of the Indian constitution, see infra note 66) the discriminatory religion – based marriage
laws continue to remain in force in India, again for the reason that by and large it is women who are victims of these laws and women's issues have a low priority on the political agenda. Women's experiences and views are not considered to be worth accommodating in policy formation even if they are the direct object of the legislation.

6.3.2 The Provisions of various laws Prevalent in India:

The relevant provisions of the many laws like child marriage restraint Act., personal laws, Hindu Marriage Act, civil law of marriage, the special marriage Act, The Hindu Minority and Guardianship Act. And all these have been analysed.

6.3.3 Law Relating to Child Marriages:

The Law relating to age of marriage, namely the Child Marriage Restraint Act. (CMRA) enacted in 1929 was subsequently amended in 1949 and 1978 to raise the age of marriage, it is popularly known as Sarda Act. The object of CMRA is to prevent child marriages. It is applicable to all citizen of the country irrespective of their religion. In 1929, CMRA defined 'Child' as a 'person who, if a female, has not completed fourteen years of age and if a male, has not completed eighteen years of age'. 'Every person, either of the sex, who is under eighteen years of age' was described as "minor". 'Child Marriage' was defined as a marriage 'to which either of the contracting parties a child'. And the term 'contracting parties to a marriage'
was explained as 'either of the parties whose marriages is or is about to be solemnized.

Thus, it prescribes the minimum age of marriage as eighteen years for girls and twenty one years for boys. It does not provide for relaxation in the age of marriage. There is no provision to marry either with the consent of parents or with the special dispensation by the court. Under CMRA, child marriage is an offence for which very mild punishment is provided. Child marriage, being a crime, is an illegal act. but once performed the marriage is valid. CMRA does not provide for the registration of a marriage. Nor does it require the consent of the parties to the marriage. It a complaint is lodged that child marriage has been arranged or is about to be solemnized, the court has the power to issue and injunction to prohibit such child marriages.

6.3.4 Personal Laws:

In addition to CMRA, there are religion-based personal laws in the matters of marriage and divorce. Hindus, Muslims, Christians and Parsis have their different marriage laws. These laws prescribe conditions for performing a valid, legal marriage. One of the conditions is regarding the age of the parties to the marriage. The other conditions are monogamy, for women only in the case of Muslim Law, Soundness of mind, prohibition against consanguinity and the made of solemnization of marriage for Hindus, Christians and Parsis. The Muslim law of marriage permits polygamy for men and soundness of mind is not an essential prerequisite.
6.3.5 Hindu Marriage Act:

The Hindu marriage Act., (HMA), 1955 is applicable to Hindus, Buddhists, Sikhs, Jains and those who are not Muslims, Christians, Parsis or Jews. In 1955 it laid down fifteen years as the age of marriage for girls and eighteen years for boys. It required girls in the age group of 15-18 years to obtain guardian’s consent for the marriage. HMA prescribe penalties for non-compliance with the condition of the age of marriage. A bride - groom as well as the bride is liable to be punished with a fine or imprisonment for up to fifteen days. However, HMA does not specify a familiar to comply with minimum age as a ground that could make the marriage either void or voidable.

6.3.6 Consent of parties under HMA:

These are two provisions of HMA that involve consent of the parties to a marriage. A marriage between two Hindus may be solemnized provided that among other criteria, at the time of marriage, neither party is incapable of giving consent because of unsound mind or even if capable of giving a valid consent is not suffering from mental disorder or insanity. If neither party to a marriage is of unsound mind the marriage does not because void but is voidable at the option of the other party.
6.3.7 Muslim Law of Marriage:

The Muslim personal law (MPL) of marriage is not codified in India. It is customary and is based on the Sharia. It lays down the age of puberty as the age of marriage. Unless the contrary is proved, the age of puberty is presumed to be fifteen years for both girls and boys.

As mentioned earlier, CMRA is applicable to all citizen of India irrespective of their religion. So CMRA is applicable to Muslim also. But still MPL maintains its destructiveness. The rules of Muslim law relating to a minor’s marriage do, therefore, conflict with the provisions of CMRA. As CMRA made changes in HMA in 1978, it did not incorporate such changes in MPL. So an one hand, the Muslim guardians in India are entitled to marry of their daughter under the age of fifteen years according to their personal law. On the other hand, for entering into such marriage on behalf of their daughters they, could be held criminally liable under the secular law of the country.

6.3.8 Christians Law of Marriage:

The Indian Christian Marriage Act. (ICMA), 1872, applicable to Christians, initially prescribed thirteen and sixteen years of age for girls and boys respectively. If parties were below the age of eighteen years, consent of the guardians was required. This provision relating to the age of the parties continued till 1952 even though the age at marriage was
changed through CMRA in 1929 and 1938. ICMA was brought on parity with CMRA in 1952 and the age of marriage was raised to fifteen and eighteen years for girls and boys respectively.

In 1978, when CMRA raised the age of marriage to eighteen and twenty one years for girls and boys respectively, it was made applicable to Christians who marry according to Section 60 of ICMA. The Provision relating to the consent of guardians in case the parties were below the age of fifteen and eighteen (the bride and bridegroom respectively) under Section 60 of ICMA as deleted – However, if either the bride or the bridegroom or both are below the prescribed age, the marriage is still valid under ICMA as is under HMA. Further ICMA, like HMA, does not require consent of the parties as an essential condition for a valid marriage.

6.3.9 Parsi Law of Marriage:

For Parsis in India, there was no statutory law of marriage until 1865. They were governed by custom and usage customary law did permit child marriages. The Parsis marriage and Divorce Act. (PMDA), enacted in the year 1865 did not prescribe explicitly the condition relating to the age of parties to a marriage. But it required that person of either sex below the age of twenty one year could marry only with the consent of parents. The marriage without such consent was invalid. The 1865 Act. was replaced is 1936 by a new Parsi Marriage and Divorce Act., and was further amended
in 1989. PMDA did make changes regarding the age of the parties to a marriage in 1989. It was brought in parity with CMRA. According to PDMA, a marriage is invalid if the condition of age is not complied with. Invalid means without legal effect or consequences. The effect of void marriage is practically the same. However, PMDA does not make under age marriage a ground to declare the marriage void.

The de facto to effect of these provisions under different personal laws of marriage is that practically there is no uniform law regarding age at marriage. Though CMRA prescribes the age of marriage for all person irrespective of their religion, in practical term, the other existing personal laws of tolerance of legal pluralism creates a situation of conflict of laws. On the one hand law restrains child marriages and on the other the personal laws give it validity. Besides this conflict laws situation, due to its other lacuna discussed earlier, the CMRA has remained merely a paper tiger.

6.3.10 Civil Law of Marriage:

In addition to these personal laws conflicting with CMRA, there is also a civil law of marriage of India. In 1872, the first civil law of marriage, the special marriage Act., was enacted in British India. It prescribed the age of marriage for a girl as fourteen years and for a boy eighteen years. This law was substantially amended in 1954. The special marriage Act.,
(SPMA) recognises a marriage to be valid and legal only, it is registered according to specified conditions. One of the conditions for marriage is the age of the parties. It prescribes twenty one years for boys and eighteen years for a girl. Non-Compliance with the condition of age at marriage makes the marriage null and void.

SPMA is the only legislation in India, which in clear term mention that the condition relating to the age of marriage must be complied with or is a mandatory condition. If the parties are not of the age as required by the Act, thus it is not possible to solemnize the marriage as a civil marriage. The ages prescribed under SPMA as well as under CMRA for the bride and the bride and bridegroom are the same. But the effect non-fulfillment of this conditions is not the same. Under the civil law it becomes void, but under the special legislation enacted with the object of restraining the marriages below a particular age, it remains a perfectly valid marriage.

It is also interesting to note that even the civil law of marriage is silent about the consent of the parties to a marriage. SPMA does not prescribe free consent of the parties to a marriage as an essential condition for a valid marriage. It seems legislations either wisdom never thought of giving importance to the concept of the consent of the parties to marriage.
6.3.11 Registration of Marriage:

Some of the personal marriage laws do make provision for registration of a marriage. For example HMA provides for registration of marriage. However, non registration of the marriage does not effect its validity. It merely imposes fines on the parties to the marriage. Under the personal laws of the Muslims, the Khazis who solemnize the marriage do keep the register with them. The same is the case with the Christians and the Parsis. The register of marriage is kept in the Church and Ayyari. The purpose behind registration is merely to provide a mode of evidence and not a conclusive proof of the marriage. Non-registration does not invalidate the marriage under any of these personal laws. The Women's connection does not subscribe to the view that child marriage or polygamous marriage could be avoided if registrations of marriage were made compulsory. India has ratified this convention but with a declaration regarding the provisions. In principle, India subscribes to the view that marriages, shall be registered but has expressed inability in making a law to this effect due to the vastness of the country and the extent of illiteracy.

6.3.12 Law of Guardianship:

In India, matters relating to guardianship are governed by personal laws. For Hindus, much of the law, including the law of guardianship has been codified. In 1956, the Hindu Minority and Guardianship Act,
(HMGA) was enacted. The welfare of the minor is the paramount consideration under this law. HMGA defines minor as 'a person who has not completed the age of 18 years'. The law presumes that a person who is below the age of majority needs to be looked after in respect of her / his person and property. HMGA recognizes the right of persons who could look after the interest of minor as guardians. Section 6 of HMGA explain who are the natural guardians of a Hindu minor. It states that the natural guardians of a Hindu minor, in respect of the minor's person and in respect of the minor's property are – I) in the case of a boy or an unmarried girl – the father and after him, the mother, (II) In case of a married girl – the husband.

The provisions of HMGA when read which CMRA and HMA, creates an anomalous situation. On one hand CMRA providing that the marriage of a girl should not take place unless she is eighteen years of age. HMA also reiterates the same age for a girls who is marrying according to its provision. But it seems that HMGA does not share this principle. Section 6(C) of AMGA mention that the husband is a natural guardian of his minor Hindu wife. It there is a prohibition on marrying at a minor age, there was no need of providing for guardianship of a minor wife. HMGA has implicitly supported a child marriage by making such a provision.
Despite the focus on the child best interest and the welfare principle in the guardianship law, colonial and post independence policies in India have failed to take cognizance of the traditional practice of child marriage. Child marriage, which is clearly against the interest of a girl child and is an offence under CMRA, is still supported and approved by the Guardians and wards Act. and HMGA.

Thus, the absence of a consistent policy with regard to marriage, guardianship and minority undermining the object of CMRA of prohibiting child marriages. As marriage does not terminate the girl’s status as a minor, inevitably the alternative legal value system allows the concept of the natural guardianship of a husband over his minor wife. This concept of a minor wife is particularly anomalous where values of gender equity demand that the law should recognize the full legal status of women.

6.3.13 Lacunae and Contradiction in Laws:

The lacunae in CMRA, the researcher has analysed the provisions of CMRA and the relevant provisions of the Indian Penal Code, personal Laws of Marriage and guardianship. This analysis points out that though the age of marriage for girls was raised to eighteen years under CMRA in 1978, there are still many lacunae in the Act. Besides, other legislation connected directly or indirectly with the question of age at marriage was not amended to conform to CMRA. The results are a number of anomalies. At the cost of
repetition, it is worthwhile briefly noting these lacunae in CMRA and the contradiction between it and marriage laws, guardianship laws and the penal laws. This method would help to understand the desired reforms that need to be introduced in the immediate future. CMRA prescribes different minimum ages for the bride and the groom.

An underage marriage, once solemnized, became legal and CMRA merely penalizes such marriage. It does not touch upon the validity of child marriage.

- CMRA does not require free consent of the parties for a marriage.
- CMRA does not make provision for registration of marriage.
- CMRA declares offences to be cognizable only for the purpose of investigation.
- There is no provision in CMRA for ex-parte injunction to prevent solemnization of child marriages.
- There are contradiction between CMRA and the Personal Laws of Guardianship.
- There are contradiction in respect of the age of consent between CMRA and law regarding the offence of rape under the Indian Penal Code.